



FH
[REDACTED]

STATE OF [REDACTED]
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/151633

PRELIMINARY RECITALS

Pursuant to a petition filed August 22, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on September 17, 2013, at Kenosha, Wisconsin. The record was held open to give Petitioner an opportunity to see if she could submit additional documentation from a psychiatrist or psychologist. She was unable to submit that to the Division of Hearings and Appeals.

The issue for determination is whether Petitioner's FoodShare benefits were correctly discontinued because of her student status.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.

2. Petitioner applied for FoodShare benefits on July 12, 2013. The application was initially approved for July for expedited FoodShare in the amount of \$129.00 as Petitioner had no income.
3. On July 22, 2013 Petitioner verified enrollment at the University of [REDACTED] -- [REDACTED] as a full-time student. Petitioner is not working.
4. Petitioner contends, however, that she should be qualified for FoodShare because of mental health issues. She submitted a letter from a licensed clinical social worker (LCSW) at the University indicating that she is receiving counseling through the University Student Health and Counseling Center and that it was the opinion of the LCSW that she not work but attend school full time.
5. The agency concluded that Petitioner has not demonstrated a mental health issue preventing employment by the letter from the licensed clinical social worker as policy requires a statement from a physician or a certified psychologist.
6. The agency sent Petitioner a notice dated August 13, 2013 indicating that her FoodShare benefits were being discontinued as she is a full-time student who does not meet one of the exemptions form work necessary for receipt of FoodShare benefits as a full-time student.

DISCUSSION

A student enrolled in an institution of higher education can only non-financially qualify for FoodShare benefits in limited circumstances:

Anyone, age 18-49, enrolled half time or more, in an institution of higher education is ineligible, unless s/he meets one of the following criteria.

1. Employed at least 20 hours a week at any wage.
2. Self employed at least 20 hours a week with self employment earnings (after SE expenses are subtracted) equivalent to at least the federal minimum wage for 20 hours a week ($\$7.25 \times 20 = \145 a week).
3. Both employed and self-employed at least 20 hours a week and earning at least the federal minimum wage for 20 hours a week ($\$7.25 \times 20 = \145 a week). Earnings are based on self employment income (after SE expenses are subtracted) plus gross income from other employment.
4. Participating in a federal or state work study program.
 - Continue the exemption until the end of the month in which the school term ends, or the student refuses to do his assigned work. A student who has stopped working during the school year because the work study funding has run out would continue to be classified as an eligible student until the end of the school term.
 - The exemption does not cover school breaks of longer than one month, unless the student is participating in work study during the break.
5. Responsible for the care of a dependent household member under age 6. If 2 people exercising parental control are in the food unit, allow student status to only 1 person per child.
6. Responsible for the care of a dependent household member who has reached age 6 but is under age 12 if the agency determines adequate child care is unavailable. If 2 people exercising parental control are in the food unit, allow student status to only 1 person per child.

7. Is a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and is exercising care and control of a dependent food unit member under the age of 12. To apply this provision there must be only one biological or adoptive parent, or stepparent in the same food unit as the child. If there is no biological or adoptive parent or stepparent living with the child, another full-time student living with the child may qualify as an eligible student under this provision if the student has parental control of the child and does not live with his or her spouse.
8. Receiving a Tribal TANF [Temporary Assistance for Needy Families] cash payment, W-2 cash payment, or working in a W-2 Trial Job. Assigned to or placed in an institution of higher learning by WIA [Workforce Investment Act].
9. Enrolled in a W-2 employment position or other TANF funded program under Title IV of the Social Security Act.
10. Physically or mentally unfit for gainful employment. Verify the claim, if it's not clear. Receipt of temporary or permanent disability benefits, a statement from a physician, or certified psychologist is appropriate verification.
11. Participating in an on-the-job training program. This exemption applies only during the period of time the person is being trained by the employer.
12. Is assigned to or placed in an institution of higher education through or in compliance with the requirements of FSET [FoodShare Employment and Training].
13. Is enrolled in an educational program that is designed to be completed in 2 years or less and obtaining certification or a diploma from the program will lead to employment that is in demand.
FoodShare (FS) Handbook, at §3.15.1.

Petitioner testified that she was hospitalized in May 2013 after a suicide attempt and that she suffers from mental health issues that prevent her from working. According to the University Student Health and Counseling Center Petitioner suffers from depression and anxiety and should attend school full-time and not work. Ex. #6.

I note, again, that the policy states: *'Physically or mentally unfit for gainful employment. Verify the claim, if it's not clear. Receipt of temporary or permanent disability benefits, a statement from a physician, or certified psychologist is appropriate verification.'* Based upon Petitioner's credible testimony, her demeanor at the hearing and the recent suicide attempt I think that it is more likely than not that she is unable to work and attend school at the same time. Further, while a statement from a physician or certified psychologist is appropriate the policy does not indicate it is mandatory or exclusive. Thus I find the statement from the licensed clinical social worker at the University clinic to be a reliable source as to Petitioner's mental health. That licensed clinical social worker is used to dealing with students and works for a reputable organization. I am, therefore, reversing the denial of Petitioner's FoodShare.

Nonetheless, Petitioner should be forewarned that at review she will again have to submit documentation to continue this exemption and I respectfully suggest that she obtain that documentation from a psychiatrist or a clinical psychologist.

CONCLUSIONS OF LAW

That the available evidence is sufficient to demonstrate that Petitioner meets the unfit for employment category of the exemptions for receipt of FoodShare benefits by full-time students.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to reverse the August 1, 2013 discontinuance of Petitioner's FoodShare benefits. This must be done within 10 days of the date of this decision.

Nothing in this Decision should be interpreted as an indefinite exemption; Petitioner should be prepared to present documentation of the continued mental health issue and that would be best done via a written psychiatrist or certified psychologist opinion.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 28th day of October, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 28, 2013.

Kenosha County Human Service Department
Division of Health Care Access and Accountability